

A403309
DOCKET NO. 2010-025 CAUSE NO. 266-03

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

PART I: IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF NEWFIELD PRODUCTION COMPANY FOR AN ORDER ESTABLISHING 40-ACRE DRILLING AND SPACING UNITS FOR THE PRODUCTION OF OIL, GAS, AND OTHER HYDROCARBONS FROM THE GREEN RIVER FORMATION IN THE S1/2 OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 1 WEST, U.S.M., AND THE S1/2 OF SECTION 19, TOWNSHIP 4 SOUTH, RANGE 1 WEST, U.S.M., AND THE S1/2 OF SECTION 19, TOWNSHIP 4 SOUTH, RANGE 1 EAST, U.S.M., UINTAH COUNTY, UTAH.

PART II: IN THE MATTER OF THE REQUEST FOR AGENCY ACTION OF NEWFIELD PRODUCTION COMPANY FOR AN ORDER POOLING ALL INTERESTS IN THE SO-ESTABLISHED DRILLING AND SPACING UNITS IN THE S1/2 OF SECTION 13, TOWNSHIP 4 SOUTH, RANGE 1 WEST, U.S.M., AND THE S1/2 OF SECTION 19, TOWNSHIP 4 SOUTH, RANGE 1 EAST, U.S.M., UINTAH COUNTY, UTAH.

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TAKEN AT: Department of Natural Resources
1594 West North Temple, Room 1040
Salt Lake City, Utah

DATE: Wednesday, December 8, 2010

TIME: 4:39 p.m. to 4:57 p.m.

REPORTED BY: Michelle Mallonee, RPR

ATKINSON BAKER COURT REPORTING
JOB #A403309

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<div>1 APPEARANCES</div> <div>2</div> <div>3 BOARD OF OIL, GAS AND MINING:</div> <div>4 Douglas E. Johnson, Chairman</div> <div>5 Ruland J. Gill, Jr.</div> <div>6 Jake Y. Harouny</div> <div>7 James T. Jensen</div> <div>8 Kelly L. Payne</div> <div>9 Samuel C. Quigley</div> <div>10 Jean Semborski (Excused)</div> <div>11</div> <div>12 DIVISION OF OIL, GAS AND MINING:</div> <div>13 John R. Baza, Director</div> <div>14 Dana Dean, Associate Director, Mining</div> <div>15 John Rogers, Associate Director, Oil and Gas</div> <div>16 Jim Springer, Public Information Officer</div> <div>17 Steve Schneider, Administrative Policy Coordinator</div> <div>18 Julie Ann Carter, Secretary to the Board</div> <div>19</div> <div>20 ASSISTANT ATTORNEYS GENERAL:</div> <div>21 Fred Donaldson - Division Attorney</div> <div>22 Steve Alder - Division Attorney</div> <div>23 Emily Lewis - Division Attorney</div> <div>24 Michael S. Johnson - Board Attorney</div> <div>25</div> <div>Page 2</div>	<div>1 Docket No. 2010-025 Cause No. 266-03</div> <div>2 Wednesday, December 8, 2010</div> <div>3 (The proceedings began at 4:39 P.M. a.m.)</div> <div>4 CHAIRMAN JOHNSON: Okay. Now, if I'm keeping</div> <div>5 track correctly, we have two more matters: Newfield, and</div> <div>6 Wolverine. Is that correct? Okay.</div> <div>7 Are we -- I think we're doing Newfield next. Is</div> <div>8 that correct, Mr. Clawson?</div> <div>9 MR. CLAWSON: It's next on the agenda. It's up</div> <div>10 to you.</div> <div>11 CHAIRMAN JOHNSON: This is Agenda Item No. 4,</div> <div>12 Docket No. 2010-025 Cause No. 266-03 - Part I: In the</div> <div>13 Matter of the Request for Agency Action of Newfield</div> <div>14 Production Company for an Order Establishing 40-Acre</div> <div>15 Drilling and Spacing Units for the Production of Oil,</div> <div>16 Gas, and other Hydrocarbons from the Green River</div> <div>17 Formation in the S1/2 of Section 13, Township 4 South,</div> <div>18 Range 1 West, U.S.M., and the S1/2 of Section 19,</div> <div>19 Township 4 South, Range 1 West, U.S.M., and the S1/2 of</div> <div>20 Section 19, Township 4 South, Range 1 East, U.S.M.,</div> <div>21 Uintah County, Utah.</div> <div>22 Part II: In the Matter of the Request for Agency</div> <div>23 Action of Newfield Production Company for an Order</div> <div>24 Pooling all Interests in the So-Established Drilling and</div> <div>25 Spacing Units in the S1/2 of Section 13, Township 4</div> <div>Page 4</div>
<div>1 FOR NEWFIELD PRODUCTION COMPANY:</div> <div>2 THOMAS W. CLAWSON, ESQ.</div> <div>3 VAN COTT, BAGLEY, CORNWALL & MCCARTHY</div> <div>4 36 South State Street</div> <div>5 Suite 1900</div> <div>6 Salt Lake City, Utah 84111</div> <div>7</div> <div>8 FOR THE DIVISION OF OIL, GAS, AND MINING:</div> <div>9 STEVEN F. ALDER, ESQ.</div> <div>10 UTAH ATTORNEY GENERAL'S OFFICE</div> <div>11 Natural Resources Division</div> <div>12 1594 West North Temple</div> <div>13 Suite 300</div> <div>14 Salt Lake City, Utah 84116</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> <div>Page 3</div>	<div>1 South, Range 1 West, U.S.M., and the S1/2 of Section 19,</div> <div>2 Township 4 South, Range 1 East, U.S.M., Uintah County,</div> <div>3 Utah.</div> <div>4 Mr. Clawson, you are representing Newfield?</div> <div>5 MR. CLAWSON: Correct. Tom Clawson on behalf of</div> <div>6 Newfield Production Company.</div> <div>7 CHAIRMAN JOHNSON: Mr. Alder, you are</div> <div>8 representing the Division?</div> <div>9 MR. ALDER: Yes, Mr. Chairman.</div> <div>10 CHAIRMAN JOHNSON: Before we go on, can we go</div> <div>11 off the record for just a minute?</div> <div>12 (A discussion was held off the record.)</div> <div>13 CHAIRMAN JOHNSON: Let's go back on the record,</div> <div>14 then.</div> <div>15 Mr. Clawson, go ahead.</div> <div>16 MR. CLAWSON: Thank you, Mr. Chairman.</div> <div>17 As the Board will recall, this is a continuation</div> <div>18 of the Board's October 27 hearing, where the Board</div> <div>19 approved 40-acre spacing for 16 wells in the Green River</div> <div>20 formation and in the Uinta Basin, and force pooled the</div> <div>21 interests of the nonconsenting owners that Newfield had</div> <div>22 been able to locate.</div> <div>23 In that hearing, the Board required that</div> <div>24 Newfield publish individualized notice for the purposes</div> <div>25 of providing notice to the unlocatable nonconsenting</div> <div>Page 5</div>


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<p>1 owners to apprise them of their opportunity to either</p> <p>2 lease their interests or join in the proposed wells.</p> <p>3 I'm here to tell you that Newfield has done that</p> <p>4 publication, as evidenced by the affidavits of</p> <p>5 publication that we recently filed with the Board. The</p> <p>6 notice was published in the Salt Lake Tribune, the</p> <p>7 Deseret News, and the Uintah Basin Standard for two</p> <p>8 weeks, two consecutive weeks. Haven't heard anything</p> <p>9 from anybody. I don't know that the Board has. I</p> <p>10 haven't seen any notice of anything.</p> <p>11 The Board recently issued its findings of fact,</p> <p>12 conclusions of law, and order establishing drilling units</p> <p>13 in an interim pooling order regarding pooling the</p> <p>14 interests of the locatable nonconsenting owners. And in</p> <p>15 view of the fact that we've satisfied the condition that</p> <p>16 the Board had regarding the interim order, I would ask</p> <p>17 that the Board make the pooling -- well, the interim</p> <p>18 order final as the pooling order with respect to the</p> <p>19 unlocatable consenting owners. That's the first point of</p> <p>20 business.</p> <p>21 But since the Board's hearing, an issue has been</p> <p>22 identified that was not addressed at the Board's hearing.</p> <p>23 And it's basically a consequence of the Law of Unintended</p> <p>24 Consequences. If the Board remembers, there was concerns</p> <p>25 about Newfield proposing several of the wells be drilled</p> <p style="text-align: right;">Page 6</p>	<p>1 the intended wellbore, or the applicant has obtained the</p> <p>2 written consent of the owner to the proposed directional</p> <p>3 drilling program."</p> <p>4 Based on the record that we created in the</p> <p>5 October hearing, the Board knows that we can't get</p> <p>6 100 percent of the written consent from all of the</p> <p>7 owners. Some of the owners are uncooperative. They</p> <p>8 won't do anything. Others of the owners are just flat</p> <p>9 not locatable. We can't find them. So therefore,</p> <p>10 Newfield -- well, the Division can't approve these</p> <p>11 permits for the directional drilling because we can't get</p> <p>12 all of the written comments, which means we have to come</p> <p>13 back before the Board simply for the purpose of approving</p> <p>14 the directional permit.</p> <p>15 And I'm thinking that the Board probably doesn't</p> <p>16 want to go through that process. All of the evidence</p> <p>17 that we would need is in the record. We established that</p> <p>18 on October 27th.</p> <p>19 So I'm here to move the Board to waive its</p> <p>20 requirement in its rules, which the Board has the</p> <p>21 authority to do, to waive the requirement in Rule</p> <p>22 649-3-11, it's Subsection 1, requiring written consent</p> <p>23 from all of the owners within a 460-foot radius of the</p> <p>24 wellbore in these directional wells before the Division</p> <p>25 can approve the directional well permit -- directional</p> <p style="text-align: right;">Page 8</p>
<p>1 in exception well locations, because Newfield had agreed</p> <p>2 with surface owners to move the surface location to avoid</p> <p>3 interrupting their farming operations. Because of those</p> <p>4 concerns, Newfield agreed to move all but one of the</p> <p>5 bottom hole locations for the wells back within the</p> <p>6 400-foot square normal drilling window. Since that time,</p> <p>7 Newfield has agreed to move all of the bottom hole</p> <p>8 locations back underneath the normal drilling window. So</p> <p>9 there are no issues about an exception well location.</p> <p>10 And in the Board's order, the Board had ordered</p> <p>11 that the Division would administratively approve any</p> <p>12 exception well locations. Now there aren't any exception</p> <p>13 well locations. Newfield's agreed to directionally drill</p> <p>14 the wells. But it turns out that before the Division can</p> <p>15 approve a permit for a directional drill, Newfield has to</p> <p>16 present 100 percent written consent from all the owners</p> <p>17 within a 460-foot radius of the wellbore, you know, in</p> <p>18 between the surface location and what will now be normal</p> <p>19 locations in the drilling window.</p> <p>20 The Board's rule regarding that is R649-3-11.</p> <p>21 And so the Board knows what it says, "An application" --</p> <p>22 it says in part, "An application for directional drilling</p> <p>23 may be approved by the Division without notice and</p> <p>24 hearing when the applicant is the owner of all the oil</p> <p>25 and gas within a radius of 460 feet from all points along</p> <p style="text-align: right;">Page 7</p>	<p>1 drilling permit.</p> <p>2 MR. JENSEN: And we can do that without notice?</p> <p>3 MR. CLAWSON: Yes. You have the authority to,</p> <p>4 you know, modify your rules. We've had a hearing.</p> <p>5 There's evidence in the record. These people have been</p> <p>6 notified of these wells, you know. They can't be found.</p> <p>7 It's circular. I mean, it's sort of an unintended</p> <p>8 consequence.</p> <p>9 MR. JENSEN: Help refresh me. So the issue of</p> <p>10 directional drilling was before this Board?</p> <p>11 MR. CLAWSON: Yes.</p> <p>12 MR. JENSEN: So that you know, Tom, I'm just</p> <p>13 worried about whether we've got any kind of a notice.</p> <p>14 MR. CLAWSON: I understand that. As you recall</p> <p>15 the hearing in October, we had APDs. We filed all of our</p> <p>16 APD plats. Some of those wells -- and I can't remember,</p> <p>17 there's a handful. There's, like, five of them -- had</p> <p>18 locations. And they were going to be drilled as vertical</p> <p>19 wells outside of the normal drilling window. And there</p> <p>20 were issues raised about whether notice had been provided</p> <p>21 to parties outside of the subject lands to apprise them</p> <p>22 of the exception well location. And that was a good</p> <p>23 concern.</p> <p>24 And so to resolve that, Newfield agreed to</p> <p>25 directionally drill the wells so they came -- so the</p> <p style="text-align: right;">Page 9</p>

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<p>1 bottom hole locations came back within the normal well 2 window. So directional drilling was brought up and 3 addressed and agreed to at the October hearing. It was 4 at issue.</p> <p>5 The other thing I would point out is by waiving 6 the rule, you are not going to effect any correlative 7 rights because, one, all these wells are coming back 8 within the normal drilling window. And all of the 9 ownership throughout the entire -- all of the subject 10 lands is uniform. There isn't any disparate ownership. 11 Everyone's going to share in the interest -- the 12 proceeds.</p> <p>13 MR. JENSEN: Mike?</p> <p>14 MR. JOHNSON: I'm thinking along the same lines 15 you are -- and maybe you just answered it -- and that is: 16 Everyone had notice of the last proceeding. Is this 17 particular bit of relief, is it something different than 18 what was noticed up before?</p> <p>19 MR. CLAWSON: And this is a continuation of that 20 prior proceeding. The Board could have done it in 21 October, but it didn't come up on anyone's radar that, 22 "Wait a minute. If you directionally drill, you need the 23 written consent."</p> <p>24 CHAIRMAN JOHNSON: Tom, which is the rule that 25 you are asking us to waive?</p> <p style="text-align: right;">Page 10</p>	<p>1 wellbore -- somebody could own down to 5000 feet, and you 2 could have a wellbore that's going 10,000 feet. And you 3 are going to directionally drill through there, even 4 though you are going to case it and you're not going to 5 produce from there, or something like that. And you 6 would want the owner, which is the party to which the oil 7 and gas is allocated, you'd want to give them the 8 opportunity to say, "No, I don't want you drilling 9 through my land." But that's not the case here. It's 10 uniform. That would be why I would think...</p> <p>11 MR. GILL: Just a technical legal question: Are 12 all of the interests that are -- for question -- 13 technically within the drilling unit?</p> <p>14 MR. CLAWSON: Yes.</p> <p>15 CHAIRMAN JOHNSON: If that's the case, then 16 40-6-6.5 Subsection 2(a) says, "In the absence of a 17 written agreement for the pooling, the Board may enter an 18 order pooling all interests in the drilling unit for the 19 development and operation of the drilling unit." 20 2(b) says, "The Order should be made upon terms 21 and conditions which are just and reasonable." 22 MR. CLAWSON: The Board has -- yeah. I mean -- 23 MR. GILL: So isn't that the statutory -- 24 MR. CLAWSON: -- the pooling order can do -- 25 MR. JENSEN: That's different than --</p> <p style="text-align: right;">Page 12</p>
<p>1 MR. CLAWSON: R649-3-11, Subsection 1. That's 2 what I read the quote from.</p> <p>3 MR. JENSEN: What about if we took this under 4 advisement and let Mike look at it and get back with the 5 Board. And we won't -- I'm thinking a few days at most. 6 My hope is that we can get where you want to be. But I 7 would like to have our counsel to --</p> <p>8 MR. CLAWSON: I was trying to avoid coming back 9 to the Board with the whole matter again.</p> <p>10 MR. JENSEN: We understand.</p> <p>11 MR. PAYNE: Can you help me understand -- or 12 maybe the Board can -- what would be the purpose of that 13 rule? Why would we require notice? I don't understand 14 what the consequence would be in waiving that.</p> <p>15 MR. CLAWSON: It's just that -- the way it would 16 work out is the Division can't approve the directional 17 drilling.</p> <p>18 MR. PAYNE: I understand that. Why would we 19 have written that rule that required notice or our 20 consent of 100 percent of the landowners? What is the 21 material effect?</p> <p>22 MR. CLAWSON: I would think that, you know, this 23 is a rather odd situation, where all of the ownership is 24 uniform throughout all of the lands. That's typically 25 not the case. You'll have disparate ownership. And a</p> <p style="text-align: right;">Page 11</p>	<p>1 MR. CLAWSON: No, no, it's not. It's the same 2 thing --</p> <p>3 MR. GILL: Is that the statutory authority that 4 would give us --</p> <p>5 MR. CLAWSON: -- we're dealing with. A pooling 6 order could do that. We didn't address that at the prior 7 hearing.</p> <p>8 MR. GILL: And that could trump the regulations?</p> <p>9 MR. ALDER: Well, the regulations do have 10 provisions that allow us to suspend the rules for good 11 cause. And it seems like this is on the verge of 12 Catch-22, and certainly good cause.</p> <p>13 The Division has a few responses to the 14 questions of the Board, if you would care to hear them, 15 Mr. Chairman.</p> <p>16 MR. GILL: I'd like to hear from counsel on 17 that. But that seems like a place we can start. 18 Certainly, a force majeure impossibility has to allow us 19 some regulatory --</p> <p>20 MR. ALDER: The point is the people you've been 21 trying to give notice to are the same people that you 22 already can't give notice to, or that you already have 23 given notice.</p> <p>24 Go ahead, Brad.</p> <p>25 MR. HILL: Brass Hill for the Division.</p> <p style="text-align: right;">Page 13</p>

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<p>1 To address Mr. Payne's question about the reason 2 for that rule, it's pretty typical within the drilling 3 industry to, say, permit a well for the Green River 4 formation. And at the bottom hole location here, we'd be 5 talking Green River formation. But in some instances it 6 doesn't pan out, so we want to go up hole and test or try 7 to produce from another formation up hole, which will be 8 in a different position relative to the bottom hole 9 location.</p> <p>10 So it's just to make sure that the operator does 11 have the mineral rights within that 460 radius of the 12 entire wellbore, just in case there should be a higher 13 completion attempted and that it doesn't conflict with 14 anybody's mineral rights.</p> <p>15 MR. PAYNE: Thank you, Brad.</p> <p>16 CHAIRMAN JOHNSON: Mr. Alder, did you say you 17 had some other answers?</p> <p>18 MR. ALDER: We were just wondering, the 460 19 setback would still be in the Order for the location of 20 the wells?</p> <p>21 MR. CLAWSON: Well, from the boundaries of the 22 drilling unit? I mean, they're headed toward the legal 23 location.</p> <p>24 MR. ALDER: I don't think we have any other 25 questions. We kind of support the request.</p> <p style="text-align: right;">Page 14</p>	<p>1 can --</p> <p>2 MR. JENSEN: I move that we take this matter 3 under advisement, allow our counsel the opportunity to 4 look at the request to waive the requirements of this 5 R649-3-11(1). And it is our intent, subject to his 6 review and concurrence that that is appropriate, that 7 this Board would intend to approve your request. And we 8 would intend to do that within the next 48 hours or so.</p> <p>9 CHAIRMAN JOHNSON: Is there a second?</p> <p>10 MR. QUIGLEY: I'll second that.</p> <p>11 CHAIRMAN JOHNSON: Okay. Any discussion?</p> <p>12 All those in favor say aye.</p> <p>13 THE BOARD: Aye.</p> <p>14 CHAIRMAN JOHNSON: Anyone opposed? Okay.</p> <p>15 So that's what we should do.</p> <p>16 MR. CLAWSON: Okay. Thank you. And thank you 17 for your patience today.</p> <p>18 (The matter concluded at 4:57 p.m.)</p> <p style="text-align: right;">Page 16</p>
<p>1 MR. CLAWSON: What I envision is we need to do a 2 Final Order, anyway. And the Final Order could contain 3 findings of fact that go to this issue, based on the 4 record that we already presented. There'd be a 5 conclusion of law that provides the authority that the 6 Board has to alter its rules, which it has. It's, like, 7 649-2-3, or something like that. And then there'd be the 8 order that, just for the purposes of these wells and only 9 these wells, the Board would waive that requirement of 10 written notice. And the reason, the finding is, is there 11 are people that are not locatable, you know. I mean, we 12 can't get the --</p> <p>13 MR. JENSEN: I'm inclined to do what he's 14 asking. I'm just asking that our counsel have 24, 48 15 hours to look at it and just make sure that you are okay 16 with it. So that's why I'm suggesting that we --</p> <p>17 MR. CLAWSON: I don't have a problem with that 18 at all.</p> <p>19 MR. JENSEN: So I'm suggesting we'll take it 20 under advisement. But our plan would be to get a 21 decision out to you within, say, the next 48 hours.</p> <p>22 MR. GILL: Do you want to make that into a 23 motion?</p> <p>24 MR. JENSEN: I can, if you want.</p> <p>25 MR. GILL: And then it's on the record and we</p> <p style="text-align: right;">Page 15</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 State of Utah) ss. 4 County of Salt Lake) I, Michelle Mallonee, a Registered 5 Professional Reporter and Notary Public in and for the 6 State of Utah, do hereby certify: 7 That the proceedings of said matter was 8 reported by me in stenotype and thereafter transcribed 9 into typewritten form; 10 That the same constitutes a true and correct 11 transcription of said proceedings so taken and 12 transcribed; 13 I further certify that I am not of kin or 14 otherwise associated with any of the parties of said 15 cause of action, and that I am not interested in the 16 event thereof.</p> <p>17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;"> Michelle Mallonee, RPR, CSR</p>

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